

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

#8

Effective Date

Sept. 22, 1992

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: West Virginia Division of Forestry TITLE NUMBER: 22

DATE EMERGENCY RULE WAS ORIGINALLY FILED: August 18, 1992

IS THIS THE FIRST EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

Yes

IS THIS THE SECOND EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

DATE OF FIRST EMERGENCY AMENDMENT: \_\_\_\_\_

SERIES NUMBER OF RULE: 3 TITLE OF RULE: Sediment Control During  
Commercial Timber-Harvesting Operations - Logger Certification

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE AS FOLLOWS: The statewide Logging Sediment Control Act Advisory Committee met to consider the comments from six public hearings and several mailed-in comments. After consideration of all, the committee agreed that the only change needed was to correct three words to correspond to the definitions...changing "logging operation" in three places to "timbering operation."

Also, in Section 5, a typographical error was corrected. This involved changing "4.1(a) through 4.1(e)" to "4.2.1 through 4.2.6."

360  
Use Additional Sheets If Necessary.

*William W. Gillespie*  
Signature



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
OFFICE OF THE SECRETARY  
State Capitol, Room R-151  
Charleston, West Virginia 25305-0310  
Telephone: (304) 558-3255  
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GASTON CAPERTON  
Governor

JOHN M. RANSON  
Cabinet Secretary

August 18, 1992

Mr. William H. Gillespie  
Administrative Forester  
Division of Forestry  
Guthrie Agriculture Center  
Charleston, West Virginia 25305-0570

RE: Emergency Rule - Title 22, Series 3 (Sediment Control  
During Commercial Timber-Harvesting Operations  
[Certification])

Dear-Bill:

Pursuant to West Virginia Code 5F-2-2(a)(12), I hereby  
consent to the proposal of the rule specified above.

You may attach a copy of this letter to your filing  
with the Secretary of State as evidence of my consent.

Sincerely yours,

*John M. Ranson*  
John M. Ranson  
Cabinet Secretary

JMR:mcl

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Sediment Control During Commercial Timber-Harvesting Operations - Logger Certification

Type of Rule:  Legislative  Interpretive  Procedural

Agency West Virginia Division of Forestry Address 1900 Kanawha Boulevard, East State Capitol (Guthrie, Bldg. 13), Charleston, WV 25305-0180

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$ 116,000	\$ 116,000	\$ Impossible to estimate now
Personal Services			\$ 80,000	\$80,000	
Current Expense			\$ 21,000	\$21,000	
Repairs and Alterations					
Equipment			\$ 10,000	\$10,000	
Other			\$ 5,000	\$ 5,000	

2. Explanation of above estimates: 4 weeks of logging safety classes - \$3,000- for consultant plus \$2,500 for staff; 60 eight-hour classes on Sediment Control - 3 staff minimum \$36,000; 200 classes on first aid (minimum of 2 staff) \$40,000; needed materials - clinometers, abney levels, printing, etc., \$15,000 = \$116,000 first year.

3. Objectives of these rules: To implement a logger certification program as called for in 19-1B (House Bill 4669; 1992 session) so as to provide for safer and environmentally less harmful logging. A 12-person, statewide, industry-legislative-environmental committee worked throughout the summer in preparing these rules.

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government.

Detracts from providing landowner assistance. Won't be able to estimate for at least a year, but will probably cut current levels by one third.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

Will cost each firm a minimum of \$500 for getting a logger certified for each crew, and the recommendation has been made that each firm certify two for each crew.

C. Economic Impact on Citizens/Public at Large.

May result in less sediment in streams and less payout of Workers' Compensation.

Date: 8-18-92

Signature of Agency Head or Authorized Representative

William D. Gillaspie

## SUMMARY OF AMENDMENTS--LOGGER CERTIFICATION

At the conclusion of the hearings and the reading of the mailed-in comments, the consensus of opinion seemed to be that the emergency rule on logger certification remain as originally presented except for correcting four typographical errors. Three involved the substitution of "timbering operation" for "logging operation," as per the term defined in the definition and changing the designation of subsection in 5.1.2 from letters to numbers. The Logging Sediment Control Act Advisory Committee considered these changes at the request of the Director of the Division of Forestry and voted unanimously for the change.

EMERGENCY

WEST VIRGINIA LEGISLATIVE REGULATIONS  
DIVISION OF FORESTRY  
DEPARTMENT OF COMMERCE, LABOR  
AND ENVIRONMENTAL RESOURCES  
Title 22  
Series 3

SEDIMENT CONTROL DURING COMMERCIAL  
TIMBER-HARVESTING OPERATIONS - LOGGER CERTIFICATION

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**§22-3-1. General**

1.1. Scope. - These regulations establish procedures by which the certification necessary before a person may directly supervise timbering operations in West Virginia may be acquired, suspended or revoked.

1.2. Authority. - West Virginia Code §19-1B-7.

1.3. Filing Date.

1.4. Effective Date.

**§22-3-2. Definitions.**

2.1. "Best Management Practices" or "BMP's" - means the technically feasible and economically reasonable procedures, as currently used in the state's silvicultural water quality management plan and as are adopted from time to time by the director, upon recommendation of the BMP Committee specified in §19-1B-7(h), used to reduce sedimentation of the waters of the state by soil erosion coming from the establishment and/or use of haul roads, skid roads, log landings, or other activities associated with the commercial harvesting of timber.

2.2. "Chief" - means the administrator of the office of water resources of the division of environmental protection or his or her agent.

2.3. "Certified Logger" - means an individual engaged in the business of severing trees for commercial purposes who has successfully completed the program prescribed by the director to ensure competency in the safe conduct of timbering operations, in first aid, and in the use of BMP's.

2.4. "Commercial" - means that which is done for a wage, fee, commission, agent or profit.

2.5. "Compliance Order" - means a written order of the director specifying

how a situation that is contributing, or has the potential to contribute, to soil erosion or water pollution, be corrected; and further specifying a reasonable and practical number of days in which the corrective action(s) must be taken.

2.6. "Conference Panel" - means the entity comprised of those persons selected by the director and the chief, as specified in §19-1B-11-a, and who, upon the request of an aggrieved person or upon petition of the chief, meet to affirm, modify or vacate orders of the director relating to commercial timber harvesting.

2.7. "Director" - means the director, also termed the state administrative forester, of the West Virginia division of forestry or his or her agent.

2.8. "Haul Road" - means a road, other than roads built under an active permit to comply with other laws or regulations, constructed or used for the transportation of logs from a landing to a state road or highway.

2.9. "Landing" - means an area, integral to the timbering operation, in or near a forest where logs are first accumulated and/or prepared for loading onto or into carriers for transportation to a wood-processing facility.

2.10. "Logger Certification" - means the issuance of a numbered certificate and a wallet-sized photo identification card to individuals successfully completing a regularly scheduled program of education, training and examination prescribed by the director in the safe conduct of timbering operations, in first aid procedures, and in the use of best management practices.

2.11. "Skid Road" - means a road over which trees and logs are carried or dragged from the point where severed to a landing.

2.12. "Timbering Operations" - means all aspects of logging, including but not limited to severing and delimiting of trees, cutting of the delimited tree into logs either at the point of severing or at a landing, the preparation of any skid and haul roads and the skidding or otherwise moving of logs to landings.

2.13. "Water Pollution Control Act" - means Article 5A, Chapter 20, of the West Virginia Code or the successor citation.

**§22-3-3. Procedures for certifying loggers; supervisory activities; carrying Photo Identification Card.**

3.1. Any individual engaged in the supervision of a logging crew shall, after July 1, 1993, be certified as a certified logger by the director. Logging crew members not involved in supervision may be certified, but certification is not mandatory.

3.2. The chief or any agent of the chief engaged in the review of timbering operations to ascertain compliance with appropriate statutes shall be specially certified by the director upon successful completion of the BMP training portion of the program.

3.3. Any individual applying for certification as a certified logger shall first complete the course of instruction prescribed by the director for that purpose and shall then complete an application form supplied by the director.

3.4. A fee of fifty dollars shall be submitted with each application for certification or for certification renewal. There shall be no prorating of the fee for partial-year certification.

3.5. Certified loggers must apply for renewal by completing a renewal form each year. A renewal form shall be sent by the director to the last known address of the certified logger at least thirty days prior to the renewal deadline. Certifications may be renewed only for two succeeding years. For the third renewal and every third renewal thereafter, the certified logger shall first complete a regularly scheduled program designed by the director to update the education and training that the logger originally completed for certification.

3.6. Certifications not renewed for two successive years shall be deemed vacant, and the number shall be available for reassignment.

3.7. Any person found guilty of supervising a logging crew without a valid certification shall be eligible for certification upon satisfactory completion of the next regularly scheduled course of instruction prescribed by the director.

3.8. A certified logger shall not directly supervise more than one crew at a time.

3.9. A certified logger shall, when supervising an active timbering operation, be at the operation each day, but does not have to be continuously present.

3.10. Certified loggers shall have their certified logger photo identification cards on their person at any time they are supervising a logging crew.

#### **§22-3-4. Logger Certification Suspension.**

4.1. The certification of any certified logger may be suspended for no less than thirty nor more than ninety days when found to be in violation of the provisions of either the logging sediment control act or the water pollution control act for a second time within any two-year period. A single incident, regardless of the number of citations, shall constitute a single violation.

4.2. Violations to be considered as cause for certification suspension shall include, but shall not be limited to:

- 4.2.1. Providing invalid or misleading information on an application form.
- 4.2.2. Failure to use appropriate best management practices.
- 4.2.3. Failure to observe compliance orders from the director.
- 4.2.4. Failure to observe a timbering operation suspension order from the director.
- 4.2.5. Failure to keep first aid certification current.
- 4.2.6. Interfering with the director's or chief's access to the operation for inspection purposes during reasonable working hours or for emergencies.

**§22-3-5. Logger Certification Revocation.**

5.1. An individual's certified logger certification may be revoked for any of the following reasons. Recertification shall be contingent upon again successfully completing the general certification procedures, but in no event shall a recertification be issued prior to one year after the revocation.

5.1.1. Providing false data on the application for certification.

5.1.2. Being found in violation of either the logging sediment control act or the water pollution control act for a third time within any two-year period. Violations to be considered as causes for certification revocation shall include, but aren't necessarily limited to, the listing set forth in 4.2.1 through 4.2.6 of this regulation.

**§22-3-6. Reciprocity With Other States.**

6.1. Reciprocity with other states with similar certification programs shall be on the basis of a written agreement signed by the director and the appropriate official of the other state.

6.2. Before signing a reciprocal agreement with another state, the director shall first determine that the program or aspect of the program under consideration is at least equal to that of the West Virginia logger certification program.

6.3. Standard first aid cards; i.e., Red Cross, Emergency Medical Technician, etc., showing competency in a course of first aid at least equal to that prescribed by the director, shall be acceptable as proof of competency for that part of the training.

**§22-3-7. Right of Appeal.**

7.1. Any person aggrieved by a decision of the director relative to his or her certification as a certified logger shall have the right to appeal the order to the district conference panel who shall, in writing, affirm, modify or vacate the order.



KEN HECHLER  
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(Plus all the volunteer  
help we can get)

**STATE OF WEST VIRGINIA**  
**SECRETARY OF STATE**  
Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

September 22, 1992

**NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE**

**AGENCY:** West Virginia Division of Forestry

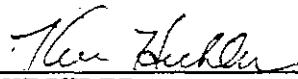
**RULE:** New Rule, Series 3, Sediment Control During Commercial  
Timber-Harvesting Operations - Logger Certification

**DATE ORIGINALLY FILED AS AN EMERGENCY RULE:** August 18, 1992

**DATE FIRST EMERGENCY AMENDMENT FILED:** September 21, 1992

**DECISION NO. 23-92**

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

  
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KEN HECHLER  
Secretary of State

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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FILED



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(Plus all the volunteer  
help we can get)

# STATE OF WEST VIRGINIA

## SECRETARY OF STATE

Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

### DECISION

### EMERGENCY RULE DECISION (ERD 23-92)

AGENCY: West Virginia Division of Forestry  
RULE: New Rule, Series 3, Sediment Control During  
Commercial Timber-Harvesting Operations - Logger  
Certification

ORIGINALLY FILED AS AN EMERGENCY RULE: August 18, 1992  
FIRST EMERGENCY AMENDMENT FILED: September 21, 1992

- par. 1 The West Virginia Division of Forestry (Division) has filed the above amendments as an emergency rule.
- par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

- par. 6 The Division filed this emergency rule with supporting documents with the Secretary of State September 21, 1992 and with the LRMRC September 21, 1992.
- par. 7 It is the determination of the Secretary of State that the Division has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority -- WV Code §19-1B-7 reads in part:
- (d) The director shall promulgate legislative rules in accordance with §29A-3-1 et seq. of this code, which provide the procedure by which certification pursuant to this article may be obtained and shall require the payment of an application fee and an annual renewal fee of fifty dollars.
- par. 9 It is the determination of the Secretary of State that the Division has not exceeded its statutory authority in promulgating this emergency rule.
- par. 10 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:
- (g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.
- par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.
- par. 12 The facts and circumstances as presented by the Division are as follows:
- The Act specifies that all loggers working in the State must be certified by July 1, 1993. The certifying procedure will have to be started no later than January in order to get the job done. Also there is a need to generate fees in order to administer the field control of logging, and no appropriation was made available to initiate this aspect of the work.
- par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g) "time limitation".

par. 14 This decision shall be cited as Emergency Rule Decision 23-92 or ERD 23-92 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Division of Forestry, the Attorney General and the Legislative Rule Making Review Commission.

*Ken Hechler*

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KEN HECHLER  
Secretary of State

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SECRETARY OF STATE

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